

**MEMORANDUM of UNDERSTANDING**  
**between**  
**NATIONAL MARINE FISHERIES SERVICE**  
**and**  
**STATE OF IDAHO**  
**GOVERNOR'S OFFICE OF SPECIES CONSERVATION**  
**on the**  
**PACIFIC COASTAL SALMON RECOVERY FUND**

**INTRODUCTION**

This Memorandum of Understanding (MOU) is entered into by the National Marine Fisheries Service (NMFS), a federal agency within the U.S. Department of Commerce, National Oceanic and Atmospheric Administration (NOAA) and the Idaho Governor's Office of Species Conservation (OSC). NMFS and OSC enter this MOU pursuant to authorities under the Endangered Species Act (16 U.S.C. 1531 et seq.) in furtherance of 16 U.S.C. 3645(d)(2) and Congressional intent and authorizations for the Pacific Coastal Salmon Recovery Fund (PCSRF), IC.67-818(2)(f) and other relevant federal and state authority.

This MOU provides the basis for the orderly and effective state allocation of PCSRF funds in Idaho. Specifically, this MOU addresses how federal salmon recovery funds provided to and administered by OSC on behalf of the State of Idaho (State) will be allocated. OSC will distribute these funds consistent with the performance goals of the PCSRF as authorized under 16 U.S.C. 3645 (d)(2) and Congressional intent.

**PARTIES**

The State of Idaho enters into this MOU acting by and through its Office of Species Conservation. OSC was created in 2001 by the Idaho State Legislature, pursuant to IC.67-818.

NMFS enters into this MOU through its Northwest Regional Office, which has primary day-to-day responsibility for federal activities related to the protection and recovery of salmon and steelhead populations in the Pacific Northwest.

**PURPOSE AND GOALS**

This MOU sets forth an OSC strategy for the efficient allocation of funds for projects and activities and describes the selection process that will be used to allocate the PCSRF funds issued to Idaho consistent with 16 U.S.C. 3645 (d)(2) or other congressional authorization and future federal appropriations to NMFS for these purposes. This OSC strategy is identified in this MOU to select projects and activities eligible for such federal funding. To avoid automatic federal

review of each project, OSC will implement the project and activities funding process in accordance with this strategy. OSC will allocate PCSRF funding to projects and activities that will have demonstratable and measurable benefits to the protection and restoration of salmon and steelhead (salmonids) and their habitat in the State. Further, it is the intent of the parties to this MOU to encourage and support salmonid conservation planning efforts.

This MOU is not the mechanism by which federal funds will be issued to the State. Issuance of federal funds to OSC to implement activities shall be done using a separate funding instrument between NOAA and OSC.

## **PROJECT FUNDING PROCESS**

The Office of Species Conservation will convene a board (Board) to meet in public session as needed and determined by the Board to allocate Idaho's portion of the PCSRF. The Board members will include amongst others the administrator of the Office of Species Conservation, the Director of the Idaho Department of Fish and Game, the Director of the Idaho Department of Water Resources, a designee of the Governor of Idaho, and a designee of the NMFS Regional Administrator who will serve as an exofficio member of the Board.

The Board will carry out its mission by reviewing and selecting projects for funding which restore anadromous habitat, enhance anadromous stocks and further anadromous research. The Board will also fund activities that are integrally related to protecting or improving anadromous habitat, especially those that increase the certainty and effectiveness of habitat projects.

The Board recognizes that local community support and a solid scientific basis are crucial to the success of anadromous recovery. Both are essential in ensuring the best projects are proposed to the Board for funding in its process. The Board will encourage local organization participation in the project solicitation and prioritization process. These organizations will benefit from developing a strategy for identification and prioritization of projects. These local lead entities are to use local technical experts to evaluate the technical merits and certainty of project technical success and local committees to evaluate projects to ensure priorities and projects have the necessary community support for success. Project selection and funding allocation decisions will be based on the degree to which the project contributes to anadromous recovery, addresses factors limiting recovery of ESA-listed salmonids, the technical merits of the projects, the level of local community support, measurable benefits of the project and the likelihood of the project achieving its goal, and the cost effectiveness of the project relative to other viable projects.

The Board will use the following strategies to seek to assure that the projects and activities funded are of the highest quality. In applying these strategies, the Board will incorporate the prioritization work being performed by local watershed organizations and will support projects and activities that are most likely to provide the greatest benefit to anadromous recovery based upon the stock status information provided by the Idaho Department of Fish & Game, NMFS

Technical Recovery Team reports, subbasin plans, NMFS regional recovery plans, or other comparable science-based assessments. In addition, the Board will work with scientists to develop a framework of ecological principles that can serve as a foundation for Board adaptive management and decisions on funding anadromous recovery projects and activities.

**Fish and Watershed Benefits:** Projects and activities will be evaluated on their contribution to anadromous recovery, based on the anticipated benefits to fish and watershed health, likelihood of success, and cost-effectiveness of the action. Actions that support salmonids listed under the Endangered Species Act (ESA) and the health of their habitats will receive preference in funding decisions. Best available science should guide the design and evaluation of all projects and activities.

**Preservation Priority:** Protection of existing high quality habitat and watershed health is necessary to support existing anadromous populations and stem their decline. Preservation of existing high quality habitats and critical watershed processes are preferred by the Board in funding projects and activities during the initial phases of anadromous recovery.

**Restoration:** Proposals to restore poorly functioning habitat should complement the protection of existing high quality habitats in a watershed, and be accompanied by sufficient scientific information to indicate the importance of the project or activity and long-term likelihood of success.

**Coordination, Integration and Leverage:** Coordination across all levels of state government is the mission of OSC and is necessary to create policy decisions that integrate multiple interests and the effective use of science for anadromous recovery. Limited financial and human resources should foster creativity and sharing across programs and organizations. Projects will be preferred that increase coordination, integrate efforts and leverage resources.

**Monitoring and Adaptive Management:** Projects and activities must include measurable performance objectives. Individually and collectively, projects and activities will be monitored and evaluated to determine their success in achieving intended outcomes, and adaptive management will be used to adjust actions where the results are not meeting the objectives. Projects must also acknowledge costs relative to project maintenance lest the project fail to deliver its intended benefits due to a lack of funds for operation and maintenance.

**Watershed Implementation:** Local watershed efforts are essential to the implementation of anadromous recovery and must be supported to increase their effectiveness. Funding processes must be consistent, predictable and stable to increase the ability of local groups to perform meaningful recovery actions.

**Regional Priorities:** Anadromous runs and other fish populations rely on a system of functioning watersheds to survive over the long-term. Coordination across watersheds within the State anadromous recovery regions is critical to set priorities and determine the best use of

limited habitat funds.

**Science:** Anadromous recovery inherently contains many unknowns and the potential for errors in funding decisions and actions. Science can provide insight into the level of certainty and risk that specific actions can produce timely, beneficial results. The Board will use science, and will defer to peer reviewed and regionally supported science for guidance, to help make policy decisions that balance the uncertainty of an action's benefit with the potential opportunity to benefit anadromous recovery.

**Covered Projects and Activities.** Projects demonstrated to be consistent with PCSRF performance goals and other congressional authorization for the PCSRF and within applicable scope and criteria established by the Board will be deemed eligible and may be funded.

**Project Proposals.** The Board shall seek applications from eligible applicants (state and local governments, treaty tribes, private landowners and non-profit organizations). The Board will use locally-based processes for the development of project lists. This will include use of the local working groups. Local working groups are encouraged to establish committees consisting of representative interests of counties, cities, conservation districts, tribes, environmental groups, business interests, landowners, citizens, volunteer groups, regional fish enhancement groups, and other anadromous recovery interests. These committees will establish and develop prioritized lists of projects within their respective regions for use by the Board in project selection and funding allocation decisions.

**Activity Proposals.** The Board will consider activity proposals from local and state governments and non-profit organizations and on-going support for regional recovery planning and implementation. Activity proposals include proposals that do not directly perform anadromous restoration or protection, but which provide related information or funds to identify limiting factors and remedies, monitor anadromous recovery or provide better on-the-ground projects. Activity proposals may include statewide activities such as: monitoring and evaluation, adaptive management, engineering services, guideline development, technical assistance, and sub basin and recovery planning and implementation.

**Project and Activities Approval.** Based on input from the local processes and scientists, the Board will make the final decision regarding which projects and activities will be funded. Science will be incorporated throughout the process at both the local and the state level. The allocation of funds will address both protection and restoration of habitat, and will recognize the varying needs in each area of the state. All projects and activities funded will be consistent with this MOU.

## **ADMINISTRATION**

OSC shall serve as the recipient and administrator of the PCSRF funds. OSC will disburse funds

through written sub-agreements with funded applicants. Sub-agreements will specify project performance requirements including monitoring and reporting of PCSRF performance metrics.

OSC and the Board will make certain that all projects and activities supplement the federal funds with a minimum of 25% in non-federal match on the PCSRF funds. Both parties agree that BPA ratepayer funds will be treated as non-federal matching funds for purposes of this MOU.

All terms and conditions of sub-agreements with funded applicants shall be at the discretion of the Board and OSC, consistent with this MOU and terms and conditions of any NOAA funding instrument and applicable federal and state law.

### **Board Administration Expenses**

OSC will expend not more than 3% of the federal funds for administrative expenses. Administrative costs include activities such as sub-agreement management and costs necessary to process and review project and activity proposals. As the OSC administers its program, the majority of the PCSRF fund administration occurs prior to the disbursement of funds to sub-agreements. Therefore, OSC is allowed to draw down the PCSRF administrative funds as needed, so long as OSC expends no more than three percent on PCSRF administration relative to the total federal direct costs at the end date of the grant award.

The parties recognize that this may not be sufficient funding for effective and expedient administration of a program of this size. Thus, OSC may pursue additional administrative, technical and scientific support for this program. Administrative expenses of State agencies (other than OSC) receiving PCSRF funds from the Board for specified activities will be limited to their federally approved indirect rate.

### **ENDANGERED SPECIES ACT CONSULTATIONS**

Execution of this MOU does not imply any authorization of incidental "take" of listed species under the ESA. Section 7 consultations will be undertaken by NMFS on projects and activities that are classified "may affect, likely to adversely affect" ESA listed salmonids. OSC will provide information necessary for the ESA consultation to NMFS and include stipulations in all sub-agreements that projects actions that may affect ESA listed species cannot commence unless and until an ESA consultation has been completed. NMFS will assign staff dedicated to these ESA consultations using PCSRF funds. The State and NMFS will develop procedures to ensure that ESA consultations are conducted in a timely and efficient manner.

If projects or activities are approved which would result in take of a listed species, OSC will work with the project sponsors and IDFG to incorporate said projects into existing section 6, section 10, or 4d authorizations or consult with NMFS on authorizing such takes. OSC will also work with Idaho state agencies to ensure that all necessary state permits are obtained.

## **REPORTING**

OSC will obtain data necessary to complete all applicable data fields in the NMFS PCSRF database for each project funded with PCSRF or State matching funds.

OSC will update the NMFS PCSRF database as new or modified project information becomes available, or at least quarterly, so that the PCSRF database contains accurate descriptions and performance metrics for all completed, ongoing, and proposed projects. On a quarterly basis, the OSC will download and complete the PCSRF fiscal verification report and submit it to NMFS.

## **ORDER OF PRECEDENCE**

Interpretation of this MOU shall occur by giving precedence in the following order:

Applicable federal and state of Idaho statutes and regulations, as they now exist or as hereafter modified.

This MOU instrument.

Any other provision, term or material incorporated herein by reference or otherwise incorporated.

## **MOU MANAGEMENT**

The MOU Manager for each of the parties shall be the contact person for all communications and notices regarding the performance of this MOU.

For NMFS: Joe Scordino  
Deputy Regional Administrator  
NMFS - Northwest Regional Office  
7600 Sand Point Way  
Seattle, WA 98115  
206-526-6150

For OSC: Jeff Allen (until a PCSRF project manager is identified)  
Policy Advisor  
Office of Species Conservation  
P.O. Box 83720  
Boise, ID 83720-0195

## **SEVERABILITY**

If any portion of this MOU or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this MOU which can be given effect without the invalid provision, and to this end the provisions of this MOU are declared to be severable.

## **DISPUTE RESOLUTION**

In the event a dispute arises involving the terms of this MOU, the OSC Director and the NMFS Regional Administrator, shall meet and attempt in good faith to resolve the matter.

## **THIRD PARTY BENEFICIARIES**

This MOU is not intended to confer benefits upon, or be subject to enforcement by third parties.

## **SAVINGS**

The obligations of the parties to this MOU are contingent upon appropriation of necessary funds by Congress, with respect to NMFS and by the Idaho legislature, with respect to OSC, and subject to any budgetary limitation that may arise.

## **WAIVER**

Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this MOU unless stated to be such in writing signed by an authorized representative of the party making such a waiver.

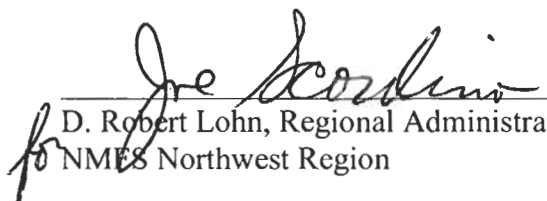
## **ALTERATIONS AND AMENDMENTS**

This MOU may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by the OSC Administrator and NMFS Regional Administrator.

## IMPLEMENTATION

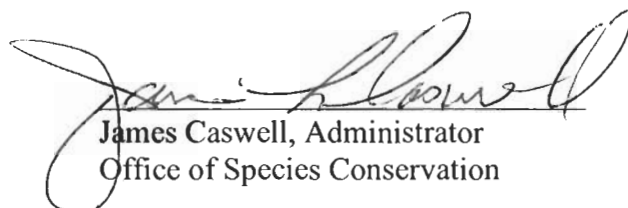
This MOU is effective as of the date signed by all parties.

### NATIONAL MARINE FISHERIES SERVICE

  
for D. Robert Lohn, Regional Administrator  
NMFIS Northwest Region

6/29/05  
Date

### GOVERNOR'S OFFICE OF SPECIES CONSERVATION

  
James Caswell, Administrator  
Office of Species Conservation

6/23/05  
Date